

1 IN THE UNITED STATES DISTRICT COURT FOR
2 THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4
5
6 UNITED STATES OF AMERICA

7
8 vs. CR. NO. 02-07-N

9
10 JIMMY CARTER, JR. and

11 ARTRONE CHEATHAM

12 * * * * *

13 JURY TRIAL

14 * * * * *

15 Before Hon. Mark E. Fuller, Judge,

16 and a Jury, at Montgomery, Alabama,

17 Commencing on June 16, 2003

18 * * * * *

19 VOL. IV (June 19, 2003)

20 APPEARANCES: For the Government: Todd A. Brown,

21 Assistant U.S. Attorney

22 For the Defendant, Carter: Maurice S. Bell,

23 Attorney at Law Federal

24 For the Defendant, Cheatham: Donald G. Madison,

25 Attorney at Law

1 Artrone Cheatham had submitted in this case on the jury
2 instructions, which is the difference -- where we requested
3 that the Court instruct the jury as to the difference between
4 cocaine hydrochloride and powder cocaine and crack cocaine,
5 in so far as their purposes of reviewing the evidence to
6 establish guilt or innocence of my client as he is charged
7 with the sale and distribution or conspiracy to sell and
8 distribute crack cocaine and not powder cocaine.

9 THE COURT: Anything else, Mr. Madison?

10 MR. MADISON: Yes, sir. The first instruction too,
11 and I understand the Court has stated that the Court denied
12 our special jury charge number one, in that we requested that
13 the Court instruct the jury that they must find as to one of
14 the overt acts alleged in the conspiracy, being the
15 possessory counts or the counts charged against the
16 co-Defendant Carter, being the only physical evidence
17 presented in this case of counts two through five as a
18 condition precedent to the jury's finding of guilt in this
19 case. And --

20 THE COURT: Okay. And the Court has ruled that that
21 is not a correct statement of the law under the pattern
22 instructions of 21 U.S.C. 846.

23 MR. MADISON: Yes, sir.

24 THE COURT: Anything else before we bring the jury
25 in?

1 (The above case coming on for trial at Montgomery,
2 Alabama, June 16, 2003, before Honorable Mark E. Fuller,
3 Judge, and a Jury, the following proceedings were had outside
4 the presence of the jury on June 19, 2003, commencing at 9:07
5 a.m.):

6 THE COURT: The record will reflect we are out of
7 the presence and the hearing of the jury before we begin
8 closing arguments. We are on the record, Mr. Madison.

9 MR. MADISON: And with the Court's indulgence,
10 yesterday when we made motions at the end of the government's
11 evidence as well as all of the evidence, I advised the Court
12 at that time I wasn't aware that the trial was going to be
13 over that soon. I inadvertently in the rush to make a motion
14 at that time omitted one or two arguments that I wanted to --
15 that we had raised previously. One dealt with the makeup of
16 the jury venire, I wanted to make sure that was included.

17 THE COURT: That's preserved. You have that
18 objection preserved.

19 MR. MADISON: And the other was the admission of the
20 documents that weren't produced to us under the standing
21 order of this Court.

22 THE COURT: Your objection is noted.

23 MR. MADISON: Yes, sir. And the other objections on
24 the record that I would make would be to the fact that the
25 Court has denied the special instruction number three which

1 MR. BROWN: Just since we are on to record, Your
2 Honor, the government has substituted redacted toxicology
3 reports for the record. Those are Government's Exhibits 3,
4 9, 11, 14 and 16. I have showed them to Mr. Bell who asked
5 that they be redacted, and I believe in speaking with him he
6 has no objection to the redacted version. We have kept a copy
7 of the unredacted version for the Court's file.

8 THE COURT: Have those copies been marked that will
9 be substituted for the unredacted copies?

10 MR. BROWN: Yes, sir.

11 THE COURT: They are marked with the same numbers?

12 MR. BROWN: Yes, sir.

13 MR. MADISON: Judge?

14 MR. BELL: That's correct, Your Honor.

15 MR. MADISON: I think I said this off the record but
16 didn't say this when we went on the record. With respect to
17 the charge on the powdered cocaine versus the crack, as the
18 Court is aware this case was tried -- severed previously with
19 Mr. Cheatham having been tried, and it's our position that at
20 the time that the Court ruled in that case to provide that
21 instruction to the jury that that became the law of this
22 case.

23 THE COURT: All right. I have a copy of the
24 indictment which has been redacted to take out count six
25 which I understand was dismissed. I think I showed this to

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1 THE COURT: We will be in recess.
 2 MR. BELL: Thank you.
 3 THE CLERK: Court will be in recess while the jury
 4 is deliberating.
 5 (At which time, 4:18 p.m., a recess was had until
 6 4:50 p.m., at which time, outside the presence of the jury,
 7 the trial continued.)
 8 MR. MADISON: I objected to those exhibits -- I
 9 think I objected to any specific reference as to Artrone
 10 Cheatham. Now, I didn't see that on the exhibit when it was
 11 presented but I did request that -- I was concerned that any
 12 information regarding Mr. Cheatham be redacted, if I recall
 13 correctly.
 14 THE COURT: And that's I am sure part of the
 15 requirement that the Court has in requiring you to exchange
 16 exhibits and premark them and look at them before they are
 17 entered into evidence. I don't have any control over what
 18 each of the attorneys says we have no objection to its
 19 admissibility in the form that it's admitted. I can't unring
 20 the bell, so-to-speak.
 21 MR. MADISON: You might not be able take to unring
 22 the bell but it's a misrepresentation of the character of the
 23 evidence that's been presented to the jury because there's
 24 been a conviction since those exhibits were made that those
 25 exhibits don't apply to Artrone Cheatham, and now this

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1 evidence shows it has no relationship to him and it's highly
 2 prejudicial and I move to exclude those from the jury's view
 3 as it pertains to Artrone Cheatham. Those exhibits were
 4 admitted as to Carter, not Cheatham.
 5 THE COURT: What says the government?
 6 MR. BROWN: I think the way the Court was going to
 7 handled it before Mr. Madison made that argument, we would
 8 agree that that would be the way to do it.
 9 MR. MADISON: Judge, again, the concession was that
 10 those exhibits applied only to -- and the testimony was that
 11 they applied only to Jimmy Carter, therefore, to allow the
 12 jury to infer any other basis or existence of those exhibits
 13 to support any inference of guilt or not guilt would be
 14 inappropriate at this point in time. Judge, I meant to do
 15 this too earlier, the -- after the finding of guilt with
 16 respect to Mr. Carter I was going to request that all the
 17 exhibits be removed from the jury's view anyway because of
 18 the fact that they had previously conceded that those
 19 exhibits and documents pertaining to those documents only
 20 applied to Defendant Carter.
 21 THE COURT: That request is denied. The exhibits are
 22 in evidence and -- Mr. Brown, do you contend that any of the
 23 evidence that is referred to by the jury's note, specifically
 24 Government's Exhibits Numbered 3, 9, 11, 14 and 16 was
 25 supported by any of the evidence presented by the government

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1 against Mr. Cheatham?
 2 MR. BROWN: I would agree that Agent Sisson
 3 testified that it was his opinion that that evidence was not
 4 linked to Mr. Cheatham. I don't know that that in and of
 5 itself prevents the jury from finding otherwise, just like
 6 they do on any other fact.
 7 THE COURT: And I agree with you -- what I am trying
 8 to wrestle with is a legal argument on a hypothetical basis,
 9 and what evidence that I heard presented from the witness
 10 stand. And the only evidence that I heard from the witness or
 11 government's witness in this case, which is the only evidence
 12 presented, is that the evidence collected from either Jimmy
 13 Carter, Jimmy Carter's person or either of the residences
 14 from which the evidence was recovered did not apply to
 15 Artrone Cheatham. Was there any evidence to the contrary or
 16 any testimony to the contrary that you can recall?
 17 MR. BROWN: Directly, no.
 18 THE COURT: Okay. It will be my ruling -- and there
 19 is case law that would allow for the Court to either instruct
 20 the jury as to any limited purpose for which evidence was
 21 admitted, and I don't recall there being a request for any
 22 limited purpose for this evidence to be admitted, but there
 23 is law that will allow the Court to withdraw evidence from
 24 the jury's consideration and instruct the jury to disregard
 25 it, and that would be my ruling on these five pieces of

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1 evidence. Let's bring the jury in.
 2 (At which time, 4:59 p.m., the jury entered the
 3 courtroom.)
 4 THE COURT: Ms. Johnson, I have another note from
 5 the jury, and I will read it so that I can ensure that it's
 6 accurate. We need a clarification on the following government
 7 exhibits: 3, 9, 11, 14, 16. These reports are on evidence
 8 which was presented against Jimmy Carter. We would like to
 9 know why Artrone Cheatham's name is on the, quote, file
 10 title, end quote. It's signed Betty Johnson. Is that the
 11 inquiry from the jury that you have sent?
 12 THE FOREPERSON: Yes, sir, it is.
 13 THE COURT: At the current status of your
 14 deliberations in this case, ladies and gentlemen, and it is
 15 not uncommon in cases from time to time for there to be
 16 portions of the evidence for which you would receive further
 17 clarification, or evidence for which the Court withdraws from
 18 your consideration and instruct that you continue your
 19 deliberations without considering that evidence. I have ruled
 20 that this evidence that you have referred to specifically as
 21 Government's Exhibits Numbered 3, 9, 11, 14 and 16 are
 22 withdrawn from the evidence that you will consider in this
 23 case against Artrone Cheatham, and you shall continue your
 24 deliberations without regard to those exhibits. Does that
 25 answer your question?

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1 THE FOREPERSON: Yes, sir. Thank you.

2 THE COURT: As Judge Hobbs says at times, the

3 biscuits may be getting cold at this point. I would ask that

4 you continue your deliberations, and you will be free to go

5 as long as you choose or break if you wish to come back in

6 the morning. But for the record, it is two minutes after 5:00

7 p.m., and I will allow you to continue your deliberations a

8 little longer and ask that you do so, but you are free to

9 break if you think that your deliberations will be better

10 served tomorrow morning than continuing on tonight. You are

11 free to begin your deliberations again. And I am going to ask

12 that the clerk go back and retrieve those exhibits since I

13 have ordered that they be removed from evidence.

14 (At which time, 5:03 p.m., the jury left the

15 courtroom.)

16 THE COURT: For the record we will be in recess.

17 MR. MADISON: Thank you, Your Honor.

18 (At which time, 5:03 p.m., a recess was had until

19 5:31 p.m., at which time, outside the presence of the jury,

20 the trial continued.)

21 THE COURT: I understand we have a verdict in this

22 case. Is there anything we need to take up before the jury is

23 brought back in?

24 MR. BROWN: No, sir.

25 THE COURT: Let's bring the jury in.

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1 (At which time, 5:32 p.m., the jury entered the

2 courtroom.)

3 THE COURT: Ms. Johnson, it's my understanding the

4 jury has reached its verdict in this case?

5 THE FOREPERSON: Yes, sir, we have.

6 THE COURT: Would you deliver the verdict to the

7 marshal and let him bring it to my attention.

8 THE FOREPERSON: (complies)

9 THE BAILIFF: (complies)

10 THE CLERK: (complies)

11 THE COURT: Ms. Johnson, is the -- and I would ask

12 each of your members if you would listen to the verdict as

13 it's being read by the clerk, and you may publish the

14 verdict. Please stand, Mr. Cheatham.

15 THE CLERK: United States of America versus Artrone

16 Cheatham. Verdict, one, we, the jury, find the Defendant,

17 Artrone Cheatham, guilty as charged in count of one of the

18 superceding indictment. Note, if you find the Defendant

19 guilty as charged in count one, proceed to paragraph 1-A

20 below. 1-A, we, the jury, having found the Defendant guilty

21 of the offense charged in count one, further finds with

22 respect to that count that he conspired to possess with

23 intent to distribute the following controlled substance in

24 the amounts shown: Crack cocaine, cocaine base. Checked is

25 weighing 50 grams or more. So say we all. Betty Johnson,

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1 foreperson. 19th June, 2003.

2 THE COURT: Ladies and gentlemen, as you have heard

3 the verdict read, if this is your verdict and your unanimous

4 verdict as to the verdict in the count against Mr. Cheatham,

5 would you indicate by raising your hands?

6 JURORS: (comply)

7 THE COURT: The record will reflect that it is a

8 unanimous verdict. I want to thank you again on behalf of the

9 United States and on behalf of the Defendants in this case

10 for your service. I know that it is evident that you worked

11 extremely hard in reaching your verdict. I find that your

12 verdicts are supported by the evidence and I appreciate the

13 dedication that you put into resolving these issues. At this

14 time you will be allowed to be dismissed and go home and I

15 appreciate what you have done. Thank you very much. Is there

16 anything that the government wishes to take up before the

17 jury is dismissed?

18 MR. BROWN: Not from the government.

19 THE COURT: Anything that the Defendant wishes to

20 take up before the jury is dismissed?

21 MR. MADISON: Other than a request for special

22 interrogatories, which I don't know if the Court would

23 indulge us at this point in time or not.

24 THE COURT: Request for special interrogatories is

25 denied. Anything else? Thank you ladies and gentlemen. You

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1 are dismissed and you can follow the marshal and I would ask

2 that they see that you leave without being contacted.

3 (At which time, 5:35 p.m., the jury left the

4 courtroom.)

5 THE COURT: I will take up the issue of release

6 pending sentencing in this case. And again, the record will

7 reflect that we are out of the presence and the hearing of

8 the jury. I find that the verdict is a proper verdict based

9 upon the evidence as the Court has heard the evidence. What

10 says the government as to the release of Mr. Cheatham pending

11 sentence?

12 MR. BROWN: The government would request detention

13 pending pursuant to 18 U.S.C. 3145.

14 THE COURT: I'm sorry?

15 MR. BROWN: We'd ask for the Defendant to be

16 detained.

17 THE COURT: Pursuant to 18 U.S.C. 3143?

18 MR. BROWN: Yes, sir.

19 MR. MADISON: We'd move the Defendant be allowed to

20 remain out on bail pending sentencing. I think the Court

21 should have the criminal background, criminal history of this

22 Defendant and the Court should note that there are absolutely

23 no prior felonies, no prior drug arrests. I think there was

24 a harassment charge or something to that effect, misdemeanor

25 at some point. I don't think that he has shown that he is

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1 any danger of fleeing or that there is a danger of him
2 fleeing from prosecution.
3 THE COURT: Mr. Brown, with the quantity of cocaine
4 base that this Defendant has been convicted of, what is the
5 government's understanding of the minimum sentence that he
6 would be subjected to?
7 MR. BROWN: Minimum sentence in this case, Your
8 Honor, is ten years to life.
9 THE COURT: Again, as was stated earlier for Mr.
10 Carter in his request, absent exceptional circumstances and
11 absent a finding by the judicial officer by clear and
12 convincing evidence that the person is not likely to flee or
13 pose a danger to any other person or the community, it would
14 be inappropriate for the Court to release the Defendant
15 pending sentencing and/or appeal, I think is what the Code
16 says. Is there any exceptional circumstances that the
17 government indicates or wishes to bring to the attention of
18 the Court?
19 MR. BROWN: No, Your Honor.
20 THE COURT: what says the Defendant?
21 MR. MADISON: Judge, again, I would reiterate under
22 the second part of that aspect when you viewed Jimmy Carter's
23 prior history I think the Court had substantial problems with
24 a lot of what was indicated previously. And I don't think
25 that there is any clear and convincing evidence that my

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1 client is likely to flee or pose a danger to any person or to
2 the community if the Court allows his continued release in
3 the community pending further proceedings in this cause.
4 THE COURT: And I have also had the benefit of the
5 report from -- make sure -- from pretrial services on Mr.
6 Cheatham, and without making a determination as to the
7 accuracy of the prior record of Mr. Cheatham I do find that
8 on September 3rd, 1997 Mr. Cheatham was involved in a -- two
9 traffic offenses for which there was a failure to appear
10 notice issued on December 16th, 1997. An alias warrant
11 issued on February 25th, 1998, and as of the date of this
12 report the warrant remained active and the traffic tickets
13 remained unpaid. Based upon the sentence that would be
14 imposed based upon the conviction of Mr. Cheatham, it is the
15 order of this Court that you be placed in custody pending
16 sentencing and you are remanded to the custody of the United
17 States Marshal. Your sentencing is set to begin at 9:00 a.m.
18 on August 28th, 2003, in courtroom A-200. I will sign the
19 sentencing order and order that you receive a copy of this
20 along with your attorney today.
21 MR. MADISON: Judge, I believe according to Mr.
22 Cheatham those were paid and I think that report may be
23 incorrect. He says when they arrested him he had to pay some
24 tickets at that time.
25 THE COURT: That's the order of the Court. You are

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1 remanded to the custody of the marshals. Court will be in
2 recess.
3 THE CLERK: court will be in recess until further
4 order.
5 (At which time, 5:41 p.m., the trial was adjourned.)
6 * * * * *
7 I certify that the foregoing is a correct transcript
8 from the record of proceedings in the above-entitled matter.
9 This the 28th day of August, 2003.

Official Court Reporter